

SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND DE KIM DU

Come now De Kim Du ("Licensee") and the Missouri Board of Cosmetology and Barber Examiners ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's cosmetology operator license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 2000.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Board at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's license. Being aware of these rights provided her by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to Licensee.

Licensee acknowledges that Licensee has received a copy of the documents relied upon by the Board in determining there was cause to discipline Licensee's license, along with citations to law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's cosmetology operator license, number 2016010423 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 329, RSMo.

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

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Joint Stipulation of Fact and Conclusions of Law

1. The Missouri Board of Cosmetology and Barber Examiners ("Board") is an agency of the State of Missouri created and established pursuant to § 329.015, RSMo, for the purpose of executing and enforcing the provisions of Chapters 328 and 329, RSMo.

2. Licensee holds a cosmetology operator license issued by the Board on or about March 31, 2016, License No. 2016010423. Licensee's Missouri cosmetology operator license was at all times relevant herein, and is now, current and active.

3. On or about March 26, 2016, the Board received Licensee's application for reciprocity. In Licensee's application, Licensee stated Licensee held a valid cosmetology license in the State of Georgia.

4. As required by the Board's application process, Licensee submitted an affidavit completed by the Georgia licensing agency verifying the type of license held by Licensee in that jurisdiction. The submitted Verification of Georgia Licensing, received on or about March 30, 2016, was purportedly issued by the Office of Secretary of State, State of Georgia, and listed Licensee's name as Kim De Du with a Cosmetologist license number of CO 100330, and an expiration date of March 31, 2018. Licensee's current and valid cosmetologist license from another state, territory of the United States, or the District of Columbia is a requirement for licensure in Missouri by reciprocity.

5. On or about October 7, 2016, the Board office attempted to verify the Licensee's licensure and disciplinary status in the State of Georgia through the State's online license verification cite using the Georgia cosmetologist license number provided by the Licensee. The Georgia license number, CO 100330, identified a license holder with a different name than that of the Licensee.

6. On or about December 7, 2016, the Board office contacted the Georgia Professional Licensing Boards Division, to resolve the discrepancy and verify that the cosmetologist license number CO 100330 in fact belonged to the Licensee.

7. On or about December 7, 2016, the Georgia Professional Licensing Boards Division responded to the Board office request for verification by stating that cosmetologist license number CO 100330 had been issued to an individual with a different name, date of birth, and Social Security Number than that of the Missouri Licensee.

8. Regulation 20 CSR 2085-14.010 states:

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(1) Appropriate Relief May be Sought. Whenever the board finds that any person is in violation of any of the provisions of Chapter 328 or 329, RSMo, or of these regulations, the board may seek immediate relief with the aid of the proper law enforcement officials of this state; or it may institute an action by requesting the attorney general to seek relief in the board's name.

(2) False Application. Any person making a false statement as to a material matter in any application, or statement or certificate required by or in accordance with Chapter 328 or 329, RSMo, or these regulations, shall be deemed in violation of Chapter 328 or 329, whichever is applicable.

9. As a result of the violations, as described above in paragraphs 3 through 7, in violation of the statutes and regulations contained in paragraph 8, Licensee violated lawful regulations adopted pursuant to chapter 329, RSMo, for which the Board has cause to take disciplinary action against Licensee's cosmetology operator license.

10. Cause exists for the Board to take disciplinary action against Licensee's cosmetology operator license under § 329.140.2 (3), (4), (5), (6), and (13) RSMo, which states in pertinent part:

The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

...

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

...

(13) Violation of any professional trust or confidence[.]

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Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo:

11. The terms of discipline shall include that Licensee's Missouri operator license, number 2016010423, shall be **VOLUNTARILY SURRENDERED** by Licensee and Licensee shall return all indicia of licensure to the Division immediately.
12. The parties to this Agreement understand that the Missouri Board of Cosmetology and Barber and Examiners will maintain this Agreement as an open record of the Board as provided in Chapters 329, 610 and 324, RSMo.
13. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.
14. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.
15. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the

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Administrative Hearing Commission to review this Agreement, Licensee may submit this request to:

Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

16. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.


LICENSEE



De Kim Du

Date 03/04/17

BOARD



Emily R. Carroll,
Executive Director
Missouri Board of Cosmetology and Barber Examiners

Date 4/11/2017

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